

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013070614

ORDER DENYING MOTION FOR
STAY PUT WITHOUT PREJUDICE

On July 15, 2013, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) with the Office of Administrative Hearings (OAH) naming the San Marcos Unified School District (District). Included in the Complaint, Student made a request for stay put. The District did not submit a reply.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)²; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

DISCUSSION

Student's complaint requests that he remain in a general education classroom for first grade as his last agreed upon and implemented educational program, and not a special day class that the District contends is his stay put placement. However, Student's stay put request does not include a copy of his last agreed upon and implemented educational program, such as an IEP or settlement agreement. Without this information, OAH cannot determine Student's last agreed upon and implemented educational program. Accordingly, Student's request for stay put is denied without prejudice and Student may submit a new motion for stay put that includes a copy of his last agreed upon and implemented educational program.

ORDER

Student's motion for stay put is denied without prejudice.

Dated: September 19, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings